

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLAYTON D. KIRSH,

Plaintiff,

v.

RODEWAY INN HOTEL AND
SUITES, et al.,

Defendants.

CASE NO. C21-5371 BHS

ORDER DECLINING TO ADOPT
REPORT & RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 10, and Plaintiff Clayton Kirsh’s request for an extension of time, Dkt. 11.

On May 19, 2021, Kirsh filed a motion for leave to proceed *in forma pauperis* and a proposed complaint. Dkt. 1. On July 9, 2021, the Court ordered Kirsh to show cause why his complaint should not be dismissed for failure to state a claim or file a proposed amended complaint to cure, if possible, the deficiencies the Court identified in his complaint. Dkt. 6. The Court informed Kirsh that the proposed complaint was fatally deficient for failure to allege sufficient facts to state a Section 1983 cause of action and for lack of subject matter jurisdiction. *Id.* The deadline for Kirsh’s response was set for

1 July 30, 2021. *Id.* Kirsh did not respond to the Court's order to show cause and did not
2 submit a proposed amended complaint.

3 Judge Fricke issued a R&R, recommending that the Court dismiss Kirsh's
4 complaint without prejudice for failure to prosecute. Dkt. 7. On September 1, 2021, Kirsh
5 moved for an extension of time to respond to the order to show cause, explaining that he
6 was unable to respond to the order because he had been diagnosed with COVID-19 and
7 was in quarantine. Dkt. 8. Because of Kirsh's response and the change of circumstances,
8 the Court declined to adopt the R&R and ordered Kirsh to show cause or file a proposed
9 amended complaint on or before November 5, 2021. Dkt. 9.

10 Kirsh again failed to respond to the Court's order to show cause, nor did he file a
11 proposed amended complaint. Judge Fricke then issued the instant R&R recommending
12 dismissal for failure to prosecute. Dkt. 10. Kirsh responded and requested a 60-day
13 extension to prepare his case. Dkt. 11.

14 The Court will allow Kirsh a final chance to either show cause or file a proposed
15 amended complaint. The Court therefore **DECLINES** to adopt the R&R at this time.
16 Kirsh is ordered to show cause why his complaint should not be dismissed, or he may file
17 a proposed amended complaint to cure, if possible, the deficiencies noted by Judge Fricke
18 on or before **February 25, 2022**.

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1 The Clerk is directed to send Kirsh the appropriate forms for filing a 42 U.S.C.
2 § 1983 civil rights complaint and for service, a copy of this Order, a copy of the Order to
3 Show Cause, Dkt. 6, and the pro se information sheet. This matter is re-referred to Judge
4 Fricke for further consideration.

5 **IT IS SO ORDERED.**

6 Dated this 21st day of January, 2022.

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9 BENJAMIN H. SETTLE
10 United States District Judge
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